Community Care and Assisted Living Appeal Board

Fourth Floor, 747 Fort Street
Victoria, British Columbia
Telephone: (250) 387-3464
Facsimile: (250) 356-9923

Mailing Address:
PO Box 9425 Stn Prov Govt
Victoria BC V8W 9V1

DECISION NO. 2014-CCA-005(a)

In the matter of an appeal under section 29 of the *Community Care and Assisted Living Act* S.B.C. 2002, c.75

BETWEEN:	ZH-H, Licensee, (operating Playtime Childcare Center's Kwaleen Daycare and After School Program and Playtime Childcare Center's –Westridge Daycare)	**APPELLANT**
AND:	Dr. Robert Parker, Medical Health Officer, Interior Health	**RESPONDENT**
BEFORE:	Helen R. del Val, Chair	
DATE:	Conducted by way of written submissions concluding on Friday, December 19, 2014	
APPEARING:	For the Appellant: Self-represented For the Respondent: Self-represented	

PRELIMINARY DECISION: STAY APPLICATION

[1] This decision deals with the Appellant's request for a stay of the Respondent's decision to cancel her licenses to operate Playtime Childcare Center's Kwaleen Daycare and After School Program and Playtime Childcare Center's Westridge Daycare, licenced group child care facilities (the "Facilities").

[2] The Respondent's decision to cancel the licenses for the Facilities is effective December 24, 2014. The Appellant asks the Community Care and Assisted Living Appeal Board (the "Board") for a stay of the cancellation decision.

[3] On the evidence before me, I am not satisfied that staying or suspending the cancellation decision would not risk the health or safety of a person in care. Therefore, a stay is not granted.

[4] Section 29(6) of the *Act* provides that the Board may not stay or suspend a decision unless it is satisfied, on summary application, that doing so would not risk the health or safety of a person in care.

[5] The Board has no discretion under section 29(6) of the *Act* to stay a decision, unless it is satisfied that a stay "would not risk the health or safety of a person in care". Further, in considering an application for a stay, the Board must make the determination on "summary application". This means that the application must not be turned into a full review of the case on the merits and, if the determination cannot be made without the need for conducting in essence a full review of the merits, then it would not be appropriate to grant a stay.

[6] I have reviewed all the materials that the parties have submitted to date and wish to emphasize that this decision has been made based on the materials solely for the purposes of determining, on the basis of a summary application, whether the cancellation decision should be stayed pending disposition of the appeal. This decision is not meant to be a determination of the full merits of the appeal. In her Notice of Appeal, the Appellant has raised 18 grounds of appeal and this decision is not a determination of any of those grounds. The Appellant is free to continue to pursue her appeal on all of those grounds.

[7] In brief, the sole issue on this summary application is whether the Board ought to grant an order to temporarily stay the decision to cancel the licences. In order to make this determination the Board must first be satisfied that such an order "would not risk the health or safety of a person in care". If, and only if, the Board is satisfied that a stay would not risk the health or safety of a person in care, will the Board then consider other factors.

[8] I acknowledge the Appellant's submissions in regard to the irreparable harm that may be caused to her business if a stay is not granted, the impact on staff and the inconvenience to the families who depend on the day care. In this case since the Board is not satisfied that a stay would not risk the health and safety of persons in care, I do not need to consider these additional factors.

Facts

[9] The Appellant holds two licenses to operate the Facilities: (a) one for Playtime Childcare Center's Kwaleen Daycare and After School Program which provides Group child care-school age (capacity 30) and Multi-age child care (capacity 32) and, (b) another for Playtime Childcare Center's Westridge Daycare provides Multi-Age child care (capacity 8).

[10] The Facilities were first licensed in September 2012.

[11] Mr. B is the Business Manager and Licensee Contact for the Facilities. In the materials submitted to the Board for this application, all of the written communications on behalf of the Licensee to Interior Health regarding the Facilities are under his name. In the materials, Mr. B also describes himself as "part owner" of the business.

[12] The Appellant has been charged with but not convicted of the following criminal offences:

- abduction of person under 14, contrary to section 281 of the Criminal Code of Canada; and
- failure to perform the legal duty of providing the necessaries of life contrary to section 215(2)(b) of the Criminal Code of Canada

[13] After the criminal charges were laid, the Licensing Authority required the Appellant to submit a health and safety plan in order to ensure the safety of the children during the period of investigation. Before finalizing the health and safety plan, there was an exchange of several emails on October 27 and 28 between Mr. B and the Licensing Officer specifically about the requirement that the Appellant have no contact with the children in care and whether she would be allowed to pick up and drop off the children. Mr. B had proposed that the Appellant be allowed to pick

up and drop off the children with a responsible adult in attendance but the Licensing Officer did not accept the proposal as performing the pick-up and drop off duties would mean that the Appellant would remain in contact with the children in care.

[14] After the exchange of emails, Mr. B responded to the Licensing Officer that "[the Appellant] will be kept out of contact with children. I will be assessing the costs incurred by your action, in violation of due process clauses of the Charter, and again give constructive notice of intent to sue. Playtime will be in compliance with your demand, at a cost of [Interior Health]."

[15] On or about November 17, 2014, the Appellant drove two children home with another employee.

[16] On November 24, 2014, Licensing cancelled the Appellant's licenses to operate the Facilities and ordered her to cease operation as of December 24, 2014 based on:

- The Licensee's ongoing non-compliance with the *Community Care and Assisted Living Appeal Act* and Child Care Regulations
- The repeated "high risk" assessments assigned to the Facilities dating back to December 2012; and
- The Licensee's failure to comply with the October 28, 2014, Health and Safety Plan.

[17] The Appellant asked the Respondent to reconsider the cancellation decision. On reconsideration, the Respondent appears to have adopted Licensing's findings and ultimately decided to uphold the decision to cancel the Facilities' licenses as of December 24, 2014.

[18] The Appellant appeals the Respondent's Decision and has applied for a stay of the cancellation decision pending the outcome of the appeal.

[19] In this application for a stay, the Appellant offered to accept certain conditions for the grant of a stay but clarified that the offer to accept conditions "is not an admission, acknowledgement or conceding to any past or future wrong doing, threat, risk or danger to any child by me, [the Appellant] and is only intended to serve as a temporary interim requirement . . ."

[20] The Appellant and Mr. B vigorously protest and disagree with the Licensing Officer's findings. They firmly believe that the Licensing Officer has acted in bad faith and lied to the authorities including the RCMP. Mr. B has issued 5 "Notices of Bad Faith Findings/Actions" to the Respondent raising strong objections against the enforcement action taken and advising him that he has "become liable to suit" for failure to mitigate damages done to the Facilities.

[21] Mr. B is subject to a June, 2006 order of the Supreme Court of British Columbia made by Mr. Justice Groberman ("the Order") which enjoins him from the unauthorized practice of law. In January, 2012, Madam Justice Bruce of the same court found Mr. B to have violated the Order numerous times over a four year period. As a result of what Madam Justice Bruce described as serious violations of the Order, she found him guilty of civil contempt for failure to comply with the

requirements of the Order. In separate court proceedings, Mr. B and the Appellant have each been declared a "vexatious litigator" by the Supreme Court of British Columbia.

Reasons

[22] The task before me is to determine whether or not I am satisfied, on this summary application, that the requested stay would not risk the health or safety of a person in care. In this case, I am not so satisfied.

[23] In summary, it is not the fact the Appellant faces unproven criminal charges that have led me to conclude that the children are at risk. In this case, it is the nature of charges being criminal offences against children that raise considerable concerns that must be addressed. Unfortunately, my concerns are not allayed but are in fact exacerbated by:

- the Appellant's failure to comply with the "no contact" condition designed specifically to ensure the safety of the children in light of the criminal charges;
- the bold defiance that the Appellant and Mr. B the Business Manager and co-owner of the Facilities have shown; and
- the risk that the children in care may directly or indirectly become caught in the middle of protracted and acrimonious conflicts among the Appellant, Mr. B and all the authorities involved.

The Criminal Charges

[24] Where criminal charges involving children are laid against an adult in whose care children are placed, it would be irresponsible for the adults around them to ignore the criminal charges, to not reflect carefully on whether the children have been left more vulnerable by the turn of events and to not take additional precautions to protect them against increased risk of harm. It may be that the risk is low but the harm could be so detrimental and irreparable to a child and his/her family that extra effort must be made to remove the risk. I hear the Appellant and Mr. B's reminder of the presumption of innocence until proven guilty but the Appellant's right to be presumed innocent must be balanced against the children's right to be kept safe.

No Contact Condition

[25] After the criminal charges were laid, the Licensing Authority required the Appellant to submit a health and safety plan in order to ensure the safety of the children during the period of investigation. The condition that the Appellant have no contact with the children in care during this period was a key element of the health and safety plan which the Business Manager of the Facilities Mr. B submitted to the Licensing Officer.

[26] The Appellant knew or ought to have known and fully understood that the "no contact" condition meant that she was not allowed to be in the same vehicle with the children in her care. The October 27 and 28 chain of email shows that Mr. B, as Business Manager of the Facilities, was the one who communicated with the Licensing Officer regarding the "no contact" condition and specifically that "no

contact" meant that the Appellant was not to be driving the children to and from the Facilities. Perhaps Mr. B and the Appellant did not adequately communicate or fully agree with each other that the "no contact" condition prohibited her from being in the same car as the children. However, that would not excuse the Appellant from compliance with the "no contact" condition.

[27] On November 17, the Appellant drove two children home. Neither the Appellant nor Mr. B has offered any evidence that the Appellant made any attempt to contact the parents or explore other options before the Appellant drove the children home. There is no evidence that there was any extraordinary circumstance or emergency to explain the non-compliance with the "no contact" condition.

[28] The Appellant and/or Mr. B raised various defences to this apparent violation including that the Appellant made sure someone else fastened the seat belts for the children and she just drove them home, therefore she had "no contact" with the children. It would appear that at various times, Mr. B may have admitted that the "no contact" condition had been violated but in a later submission, he made it clear that no admissions were made. Furthermore, the December 18 submission from the Appellant evidences her apparent disagreement with some of Mr. B's statements. She stated:

> "Mr. [B] is entitled to his opinion but I do not agree that I was in contact with the children and in the alternative, if I was, it was only to help Jenny relieve an infant's and toddler's distress. That is not a bad decision. Even if I had other options available to me I thought the children would fare better if they wouldn't have to wait even longer for someone else to come and pick them up as we were closed and it was already long after hours at which time I am permitted to be at the facility normally under my new bail conditions and I was careful to take the children home without being in contact with them."

High Conflict Environment

[29] The Appellant is adamant that all accusations against her are false and malicious and Mr. B has notified the Respondent that he is "liable to suit" for the bad faith findings of the Licensing Officer. In sum, both the Appellant and Mr. B promise vigorous opposition to all action taken against them.

[30] Both the Appellant and Mr. B have been declared vexatious litigants by the Supreme Court of British Columbia in an action unrelated to the proceeding before me. Such a declaration is extremely rare and made only in highly exceptional cases where a litigant has virtually formed a habit of commencing litigation. Mr. B, the co-owner of the Facilities and Business Manager has been found guilty of civil contempt for failure to comply with an order of the Supreme Court of British again in a matter unrelated to this proceeding. Based on the record that the Appellant and Mr. B have established in the justice system, I believe that this dispute over the operation of the Facilities could well be only the beginning of multiple protracted and bitter disputes among multiple parties and I fear that the children and their families could inadvertently be dragged into or somehow caught in the middle of the conflict. That would be an unhealthy environment to leave the children.

[31] In the circumstances, I am not satisfied that the stay of the cancellation decisions would not risk the health and safety of the children in care. Accordingly, I am not granting a stay of the cancellation decisions.

"Helen del Val"

Helen R. del Val, Chair

Community Care and Assisted Living Appeal Board

December 22, 2014